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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,225	09/04/2003	Werner Haberbosch	HUBR-1183.1 DIV	5684
24972	7590	04/09/2009		
FULBRIGHT & JAWORSKI, LLP 666 FIFTH AVE NEW YORK, NY 10103-3198			EXAMINER AZPURU, CARLOS A	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 04/09/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/655,225

Applicant(s)

HABERBOSCH, WERNER

Examiner

Carlos A. Azpuru

Art Unit

1615

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-22 and 26-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-22 and 26-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of the appeal brief filed 05/20/2008. After an appeal conference, it was decided that prosecution would be reopened in this case.

The following is a modified rejection of the claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 18-22, 26-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,322,411 (US'411) in view of Hunter et al (US2003/0203976) or Silvestrini (US 5,234,456) both in view of Mizuno et al and Ikehara. .

US'411 teaches that 3-deazaadenosine is an anti-inflammatory compound (See Abstract. US'411 does not teach the inclusion of these compounds into a stent coating.

However, the inclusion of anti-inflammatories into stent coatings is taught by both Hunter et al (see [0151] and Silvestrini (see col.3, line 18). Therefore, those of ordinary skill in the art would have expected similar therapeutic effects from the inclusion of 3-deazaadenosine or an analog thereof into a stent coating given the teaching that these compounds are anti-inflammatories as taught by US'411 and further by both Hunter et al and Silvestrini et al who teach that anti-inflammatories are commonly incorporated into stent coatings. Neither reference discloses or teaches the specific compounds of claim 19.

The Mizuno et al and Ikehara references disclose that 3' deazaadenosine 3',5'-cyclic phosphates and 3-deazaadenosine 5'-diphosphoric acid derivatives of 3-deazaadenosine are well known. Those of ordinary skill would have therefore expected similar therapeutic results from the use of these derivatives.

The instant claims setting out the a coated stent comprising 3-deazaadenosine or an analog thereof would have therefore been obvious to one of ordinary skill in the art at the time of invention given the teachings of US'411 in view of either Hunter et al or Silvestrini, and further, the use of the specific compounds of claim 19 would have been obvious to one of ordinary skill in the art at the time of invention given the disclosures cited above, both in view of Mizuno et al and Ikehara.

Applicant should note that no reference could be found for the specific 3-deazaadenosine-3'-monophosphoric acid of claim 19. Therefore, if the claims are amended to recite only this compound in the independent claims, the claims would be in condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Carlos A. Azpuru/
Primary Examiner, Art Unit 1615

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Primary Examiner
Art Unit 1615

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